No. 90-3Lab-68/813.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s Technological Institute of Textiles, Bhiwani.

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

Reference No. 62 of 1965

between

THE WORKMEN AND THE MANAGEMENT OF M/S TECHNOLOGICAL INSTITUTE OF TEXTILES, BHIWANI

Present :

Shri B. R. Ghaiye for the management.
Shri Sagar Ram Gupta and Shri Makhan Singh for the workmen.

AWARD

An industrial dispute having come into existence between the workmen and the management of M/s Technological Institute of Textiles, Bhiwani over the following two items, the same was referred for adjudication to the Industrial Tribunal, Punjab under clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947,—*vide* Punjab Government notification No. 307-SF-III-Lab-65/16754, dated 30th June, 1965 :—

(1) Whether Sunday/holiday working should be allowed in the mills ? If so, to what compensation/increase in wages, the workmen are entitled ?

(2) Whether all the workers of the Mills who worked on 26th January, 1963, i.e., National Holiday are entitled to any compensatory holidays or wages ? If so, at what rate and with what details ?

The tribunal issued usual notices to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. The pleadings of the parties gave rise to six issues which are as under :—

(1) Is the reference invalid for reasons given in para No. 1 of the preliminary objections in the written statement ?

(2) Whether any settlement was arrived at between the parties on 18th July, 1963 ? If so, what effect the said settlement has got on the present reference ?

(3) Is the dispute in question not an industrial dispute ?

(4) Can not rise in wages be claimed in view of the fact that the wages fixed by the previous Wage Board are now being considered for fixation by the second Wage Board ?

(5) Whether Sunday/holiday working should be allowed in the Mills ? If so, to what compensation/increase in wages, the workmen are entitled ?

(6) Whether all the workers of the Mills, who worked on the 26th January, 1963, i.e., National Holiday, are entitled to any compensatory holiday or wages ? If so, at what rate and with what details ?

Parties were called upon to lead their evidence in respect of the said issues. After a part of the evidence had been recorded by the said Tribunal and while the case was still pending there, the Punjab Re-organisation Act, 1966 came into force and by reason of Section 93 of the said Act the case stood transferred to this Tribunal. As soon as notices were issued to the parties to appear before this tribunal the management filed a petition in the High Court of Punjab and Haryana under article 226 of the Constitution of India alleging that this Tribunal had no jurisdiction because the case was not properly transferred to this Tribunal. The High Court passed an interim order for stay of the delivery of award and as a result of this the case was adjourned *sine die*. The said petition was ultimately dismissed by the High Court and the proceedings in the case were thereafter recommenced. The parties then concluded their evidence and their representatives also addressed their arguments to me. It may be stated here that item No. 2 of the dispute as mentioned above was mutually settled between the parties by means of the settlement EX. A. and the representative of the workmen made a statement before me that the workmen did not claim any further relief with regard to the said matter, and that the said matter need not now be adjudicated. In view of this statement issue No. 6 does not require any decision and I would, therefore, restrict my decision to issues No. 1 to 5.

Issue No. 1 *to* 4.—No argument at all were addressed by the representative of the management on the aforesaid four issues, and otherwise also the objections covered by these issues have no force. I shall deal with them *seriatim* :—

Issue No. 1.—This issue is based on a plea of the management that the working of the mill on Sundays started as far back as in 1954 and has been continuously in force ever since then. It is contended by the management that while making the reference in question the Government have presumed that the mill is not already working on Sundays and that it is for the first time to be determined whether it should be allowed to work on Sundays. The contention is hyper technical and has no force at all. The reference only means whether the management should be allowed to continue working the mill on Sundays. Both the parties have understood the reference as meanin this and both have led their evidence on this basis. The issue is decided against the management.

Issue No. 2.—The plea of the management on which this issue is based is that a settlement was arrived at between the parties on 18th July, 1963 in which it was agreed that regarding Sunday working enquiries would be made from different centres like Modi Nagar, Phagwara, Delhi and Gawalior and in the light of the system prevalent there the shift changes will be suitably adjusted. A copy of this settlement has been produced in court and has been marked as EX.R-I. The last paragraph of this document reads as under :—

> "Regarding Sunday working enquiries will be made from different centres like Modi Nagar, Delhi, Phagwara and Gawalior and in the light of system prevalent their shifts changes will be suitably adjusted."

This settlement is dated 18th July, 1963. The demand notice which resulted in this settlement is EX. R.18/6. The demand No. 17 of the said notice was in the following terms :—

> "For the last some days, the management has started working first shift on Sundays or close days. This working of the first shift on close day has caused a great trouble to the workers. It is, therefore, demanded that the working of first shift on Sunday should be stopped with immediate effect."

The demand which is the subject-matter of the present reference is contained in a subsequent demand notice which is dated 22nd February, 1965 and the demand there is that Sunday working in the mill in question should be discontinued immediately. The said settlement, therefore, can have no bearing on the demand which is now to be adjudicated. This issue must in the circumstances be decided against the management and is so decided.

Issue No. 3.—The case of the management is that no specific demand in respect of the discontinuance of the Sunday working was ever made by a substantial number of workmen and the dispute now referred was, therefore, not an industrial dispute. The demand notice which forms the basis of reference is dated 22nd February, 1965 and was given by the T.I.T. Karamchari Sangh (Registered) which is admittedly one of the main trade unions of the concern in question and with whom the concern in question had arrived at a number of settlements on various points. Atleast 7 such settlements have been produced on this record and EX.R.1 on which the management have themselves relied in their written statement is one of them. This objection in my opinion has no force and issue No. 3 is accordingly decided against the management.

Issue No. 4.—The case of the management with respect of this issue is that wages were fixed by the Wage Board and the second Wage Board has now been constituted to revise the same. The plea taken by the management is that no adjudication can now be made by this Tribunal with regard to the wages. The plea of the management, however, is misconceived. In the present case I am not called upon to give to the workmen any rise in wages. The demand made by the workmen is that if Sunday working is allowed it would cause hardship and inconvenience to the workmen and, therefore, those of them who are called upon to work on Sundays should be suitably compensated. The recommendations of the Wage Board have nothing to do with this matter and the said recommendations or their implementation by the management does not in any way bar the adjudication of this demand.

Issue No. 4 is in the circumstances decided against the management.

Issue No. 5.—It is a common case between the parties that the system of the working the mills in question on Sunday started as far back as 1954. It is also a common case between the parties that till the beginning of 1961 two shifts of the mill used to work on all Sundays from 1954 onwards. It appears that some where in the beginning of 1961 the mill introduced the working of the third shift also on Sundays on some what irregular basis. In the year, 1961 the third shift worked on some Sundays only but the system of working of the third shift became regular from 1962 onwards. The first notice on this point which the workmen gave to the Mill is dated 21st January, 1963 which is Ex. R.5. In this notice demand No. 4 was made in the following terms :—

> "The management has since sometime been running a shift (in part or in full) on all Sundays and other weekly holidays due to which the workmen face great difficulties. It is demanded that no department of the mill should be worked in the morning of any weekly holiday and this practice should be stopped immediately".

It is significant that in this demand notice the workmen did not ask the management to stop the Sunday working of the mills altogether. Later the workmen gave another demand notice on 30th June, 1963 and for the first time a demand was made in this notice that the entire Sunday working of the Mill should be stopped. The same demand was repeated in the demand notice dated 21st February, 1965 and this is the aforementioned demand notice which forms the basis of the present reference. The case of the workmen is that if a mill is worked on Sundays the workmen do not get any general holiday for all of them and are, therefore, deprived from holding a general meeting of their union or to have social gatherings of all the workmen simultaneously. In my opinion the demand of the workmen that the mill should not work at all on any Sunday is stale and belated. As I have said above it is admitted by the workmen that the Mill started working on Sundays as far back as 1954. The workmen never made any demand that it should not so work. For about 9 years they kept absolutely silent on this point. In their first notice of demands which is Ex. R.5 they did not ask for stoppage of the Sunday working altogether. It appears that for the first time in June, 1963 it occurred to them that they should make a demand asking for total discontinuance of Sunday working. On merits also the workmen have not been able to substantiate their case for the total discontinuance of Sunday working, nor even for the total stoppage of the working of the third shift on Sundays. In Pfizer (Private), Bombay and its Workmen 1963 ILLJ-548, their lordships of the Supreme Court of India observed at page 548 of their judgement as under :—

> "In dealing with the merits of the dispute in the present appeals, it is essential to bear in mind that in the face of the present national emergency the complexion of the problem has completely changed. The whole economy of the country is now being put on a war basis and inevitably industrial production must be geared up to meet the requirements of the nation. There can be no doubt that at present, capital, labour and industrial adjudication alike must be sensitive, and responsive, to the paramount requirement of the community which is faced with a grave danger, so, all legitimate efforts made by the employer to produce more and more of the goods required for the community must receive the co-operation of the employees of course, on reasonable terms. Both

the learned Attorney-General and Mr. Sule conceded that at the time when this Court is dealing with the problem raised by these appeals, it would be necessary to decide the issues in the light of the premptory and paramount requirement of the nation at this hour. There can be little doubt that if the tribunal had been dealing with the present dispute at this time, it would have adopted an entirely different approach."

In that case the management had taken a decision to introduce three shifts instead of two with a view to have more production and also with a view to see that the continuity of process of the manufacture of certain drugs was maintained. Their lordships allowed that to be done but remanded the case back to the tribunal with a view to assess suitable compensation for the workmen.

In view of the present emergency the observation of their lordships of the Supreme Court of India in the aforesaid paragraph apply with full force to the present case. It cannot be denied that if the mill is worked also on Sundays its production will roughly increase by 1/7 and the production of an essential commodity like cloth is at the present moment a paramount requirement of the community. In the circumstances I have no hesitation at all in dismissing the demand of the workmen that the mill should totally discontinue its working on Sundays. It is, however, admitted by the parties that if the third shift as now introduced is allowed to work on a Sunday, the workmen who work on Saturday 'B' shift and are released from duty at 9.30 P.M. on Saturday have to report again for duty at 5.30 A.M. on the following Sunday. It is also admitted that the workmen who work in the 'C' shift on Saturday and who are released at 5.30 A.M. on the following Sunday have to report again for duty at 1.30 P.M. on the same Sunday. The case of the workmen is that those who work in 'B' and 'C' shifts on Saturday get only 8 hours rest before being put on duty in their respective shifts on the following Sundays. It is urged that this causes great hardship particularly to the workmen who have to work till 5.30 A.M. on Sunday in the 'C' shift of Saturday and who are again called to work at 1.30 P.M. on the same Sunday. Evidently the workmen who have to work from 9.30 P.M. on Saturday till 1.30 A.M. on Sunday have to remain awake for the whole of Saturday night and by reason of the fact that they have again to be on duty at 1.30 P.M. on the same Sunday they do not get any time to have their sleep even on Sunday noon. The contention raised is that hardship is caused to the workmen of both B and C shifts on Saturdays who have to work on the following Sundays but the hardship to shift 'C' is much more. In fact one of the trade union of this Mill claimed special relief only for the workmen of 'C' shift on Saturdays and RW. 4. Shri Makhan Singh, General Secretary of the said trade union gave his evidence in which he complained only about the hardship to the workmen of the 'C' shift of Saturday. There can be no doubt that the workmen of 'C' shift of Saturday are put to a great hardship because if they have to remain awake on the previous Saturday night by being on duty from 9.30 P.M. on Saturday at 5.30 A.M. on Sunday it is really hard to ask them to resume duty again from 1.30 P.M. to 9.30 P.M. on Sundays. The demand of these workmen for some compensation to be paid to them for this hardship seems to be just and proper. I feel that the workmen of 'B' shift also deserve some compensation because they are also put to some extra hardship though the same is not as much as the one to which the workmen of 'C' shift are put. They get at least a night to sleep. Unfortunately, however, no clear claim for compensation has been made for the workmen of 'B' shift and it is not possible for me to grant any relief to them in absence of a clear claim. The question to be considered is what compensation should be given to the workmen of the shift 'C' who have to work for 8 hours during the night intervening Saturday and Sunday and who are again called upon to work at 1.30 P.M. on the same Sunday. Three mills of Delhi, namely Delhi Cloth Mills, Swatantra Bharat Mills and Birla Cotton and Spinning and Weaving Mills Ltd., had similar shifts and their workmen raised demands that the workmen of the shifts working on Sundays should be given special compensation. A settlement was arrived at between the parties and the same is published at pages 43 to 45 of Delhi Gazette, dated 4th February, 1965. Paragraphs 1 and 2 of the same are in the following terms :—

(1) At present in Birla Mills the shifts change every week on Mondays, and in Ajudhia Textile Mills every fifteen days. Instead, it is agreed that the shifts will in future change once every 4 weeks and if mutually agreed between the concerned parties then on the first of every month.

(2) In order to give relief to the workmen of the night shift who are required to come in the day on the date of change over of shifts, it is agreed that :—

(a) In case the management wants to run the Mills wholly or partially the full three shifts on the date preceding the date of change over then the workmen concerned of the night shift will be paid extra wages separately on the registers concern.

or

(b) There will be only 2 shifts (of 8 hours each excluding rest interval) on the date preceding the date of change over of shifts. The workers of Engineering, Maintenance, certain processes in Dyeing and Bleaching and other essential services may be required to work during the closed shift, in accordance with the Factories Act. During the closed shift those workers who are required to attend for essential services mentioned above will get alternate rest days (as at present) If the date on which only two shifts are to be run as stated above, falls on the National /Festival Holiday when the Mill is closed, then on the next date all the three shifts will be run full time".

After giving my careful consideration to the matter I feel that the aforesaid settlement gives a very good criteria of compensation which should be allowed to the workmen of 'C' shift who works on Saturday night and are again called upon to work on the following Sunday from 1.30 P.M. to 9.30 P.M. In case the management wants to run the Mills wholly or partially the full three shifts preceding the date of change over of the shifts, then the workmen concerned of the night shift will be paid extra wages for two hours on a *pro rata* basis to be shown separately on the registers concerned. The mill may, however, have only two shifts (of 8 hours each) including the rest interval on the days preceding the date of the change over of the shifts and in that case no extra wages need be paid by the mill to the workmen working in any of the two shifts. At present the change over of the shifts of this mill takes place every week. The mill may in discretion introduce a system of change over of the shifts every month. If they do so they will have to pay compensation to the workmen only once a month. If however, they persist to have the present system of weekly change over of the shifts they will have to pay the aforesaid compensation to the workmen of 'C' shift of Saturday for working on every Sunday from 1.30 P.M. to 9.30 P.M. (inclusive of the period of interval). If by introducing any new system, the management of the mill is able to avoid the aforesaid inconvenience to the workmen namely their working on a night and again being called

upon to work on the following day at 1.30 p.m. they will not be liable to pay any compensation. The mill is permitted to continue the working of the third shift on Sundays on the aforesaid terms and conditions only. In case they do not wish to abide by these terms they are directed to discontinue the third shift on Sundays which they introduced on irregular basis in 1961 and on regular basis in 1962.

No order as to costs.

Dated 30th December, 1967.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 1480, dated Chandigarh, the 30th December, 1967

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

The 11th January, 1968

No. 12179-3Lab-67/753. In exercise of the powers conferred by sub-section (1) of section 20 of the Workmen's Compensation Act, 1923 (8 of 1923), the President of India is pleased to appoint the Deputy Commissioner, Jind to be the Commissioner for the purpose of the said Act for the Jind District.

No. 52- Lab-68/751.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and the manegemnt of M/s Globe Steels, Ballabgarh.

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

Reference No. 42 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S GLOBE STEELS, BALLABGARH

Present.—
Dr. Anand Parkash, for the management.

Shri A. R. Handa, for the workmen.

AWARD

An Industrial dispute having come into existence between the workmen and the management of M/s Globe Steels, Ballabgarh, over the matter mentioned below, the same was referred for adjudication to this Tribunal under clause (d) of sub section ( ) of section 10 of the Industrial Disputes Act, 1947,—*vide* Haryana Government notification No. 158-SF-III-Lab-67/6487, dated 21st March, 1967 :—

"Whether the workmen shown in the lists (appended) should be categorised/treated as permanent or probationer. If so, from which date and with what details?".

Usual notices were issued to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. The management took several preliminary objections in their written statement and the pleadings of the parties gave rise to as many as 5 issues which were framed on 15th September, 1967. The parties were directed to produce their evidence in respect of the said issues but before they could lead any evidence, a sort of mutual settlement was arrived at between them. Originally the dispute related to 35 workmen whose names are mentioned in the two annexures to the reference but the representative of the workmen later limited the dispute to 27 workmen only, a list of whose names be filed along with his statement of claims. The management regularised 18 of those workmen. 7 had already left service and with regard to the remaining 2 workmen the management promised with the union of the workmen to consider them for regularisation. The trade union at whose instance the reference had been made felt satisfied with the action of the management and their representative made a statement before me that he did not wish to produce any evidence in respect of the item of dispute. In fact he made an application that I should make a no dispute award in as much as the workmen did not need any adjudication of the dispute. The demand covered by the item of dispute must in the circumstances, be deemed to have been withdrawn as having been satisfied and at any rate no evidence has been led to prove it. The demand is accordingly dismissed.

No order as to costs.

Dated 11th December, 1967.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

No. 1470, dated Chandigarh, the 29th December, 1967

The award be submitted to the Secretary to Government Haryana, Labour and Employment Department, Chandigarh, as required by section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

The 15th January, 1968

No. 373-3 Lab-68/1137.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Behu Mal & Sons, S. B. Road, Ambala Cantt :—

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 112 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S BEHU MAL & SONS, S. B. ROAD, AMBALA CANTT.

Present.—Shri Amar Nath claimant in person.
Shri Parkash Chander proprietor of the respondent concern.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with the proviso to that sub-section of the Industrial Disputes Act, 1947, the President of India has referred the following dispute to this Court for adjudication,—*vide* government gazette notification No. ID/UMB/144A-67, dated 6th December, 1967 :—

'Whether Shri Amar Nath should be paid wages for the period of his forced unemployment from 20th January, 1967 to 14th September, 1967? If so, with what details?

On receipt of the reference usual notices were issued to the parties. On the date fixed for hearing the claimant Shri Amar Nath made a statement that an amicable compromise has been effected between the parties and he has received all his dues and that no amount is now due to him from the respondent on account of his wages. I, therefore, give my award accordingly. No order as to costs.

Dated 30th December, 1967. P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

No. 37, dated the 4th January, 1968.

This award is submitted to the Government of Haryana, Labour Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

The 16th January, 1968

No. 370-3Lab-68/1294.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Tej Industries, Gurgaon.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 6 of 1967

Between

THE WORKMEN AND THE MANAGEMENT OF M/S TEJ INDUSTRIES, GURGAON

Present :—Shri G. B. Kaushik, for the workman.
Shri S. N. Bhandari, for the management.

AWARD

Shri Tilak Raj Anand was employed as a painter in M/s Tej Industries, Gurgaon on 18th April, 1964 at Rs. 150. He was allegedly retrenched from service. This gave rise to an industrial dispute and the Government of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 read with the proviso to that sub-section of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* gazette notification No. 3(1) SF III-Lab-67/2084, dated 20th January, 1967 :—

'Whether the action of the management in terminating the services of Shri Tilak Raj Anand, Painter, is justified and in order? If not, to what relief the worker is entitled?

On receipt of the reference usual notices were issued to the parties. The workman Shri Tilak Raj Anand in his claim statement has stated that he was appointed on 18th April, 1964 and at the time of appointment it was agreed that he would be kept in service for a period of 5 years. A certificate copy of which is Ex. A/1 was given to him by Shri Partap Singh on behalf of the management and for this reason also retrenchment is said to be not justified. It is alleged that the management had also failed to give a notice in form P under rule 75 of the Industrial Disputes (Punjab) Rules, 1958 and section 25F of the Industrial Disputes Act, 1947 to the Secretary to the State Government, Department of Labour. It is further alleged that the reason given for retrenchment in the retrenchment notice, i.e. "lessening of work, we don't have enough work to keep a painting man" is wrong and as is also against the rules because the retrenchment notice has not been given by an authorised person. It is further stated that the workman knows

the job of shaperman, fitter and turner and on 3rd September, 1967 he submitted an application for employment against any of the vacant posts advertised by the management but the workman was not recruited against any of the vacant posts. It is also stated that the workman has been victimised because he was taking an active interest in trade union activities. It is alleged that the claimant was a protected workman as intimated to the management under the Industrial Disputes Act, 1947 and for this reason also his retrenchment was illegal. It is, therefore, prayed that the workman be reinstated with full back wages with continuity of service.

The management were permitted to file a revised written statement,—*vide* orders of my learned predecessor dated 19th May, 1967. A preliminary objection has been taken that the reference is invalid, illegal and *ultra vires* of the powers of the appropriate Government because the reference proceeds on the assumption that the services of the workman Shri Tilak Raj Anand have been retrenched but this is against the stand taken up by the union in their notice of demand dated 29th September, 1966 in which the only ground taken is that the claimant had been appoined for a period of five years and for this reason his services could not be terminated earlier. The further objection is that the Engineering Mazdoor Union which has espoused the cause of the workman is not a union of the establishment and has, therefore, had no locus-standi much less any representative character to represent a workman of the establishment or to file any statement of claim on his behalf.

On merits it is pleaded that the workman was appointed as a painter on a salary of Rs. 150 per mensem and there was no guarantee that his appointment would continue for a period of five years and that the certificate said to have been given by Shri Partap Singh an ex-employee of the management was of no consequence as the said ex-employee had no authority to issue such a certificate. As regards the notice of retrenchment it is submitted that it was issued by a duly authorised person and there was in fact no work which could be given to the workman because he was employed in the concrete mixture department which had to be totally closed and a settlement to this effect was arrived at before the Conciliation Officer. It is further pleaded that the workman is not competent to question the legality of the retrenchment notice because of the contradictory stand taken in the notice of demand dated 29th September, 1966 and the statement of claim filed in these proceedings. As regards the non-employment of the workman as a shaperman, fitter or turner it is stated that no person was employed on the basis of the posts advertised because the proposal to install a new plant did not materialise. As regards the alleged victimisation on account of trade union activities it is submitted that it has now become a stock phrase and has been made simply for the purpose of making out a semblance of a case. It is alleged that the management was not even aware of the fact that Shri Tilak Raj was a member of any union and he was never recognised as a protected workman and the question of victimisation does not arise at all. It is alleged that the retrenchment was effected in accordance with the law and the workman is not entitled to any relief.

My learned predecessor Shri Hans Raj Gupta framed the following issues which arose from the pleadings of the parties :—

(1) Whether the present reference is invalid, illegal and *ultra vires* of the powers of the appropriate Government for the reasons stated in preliminary objection No. 1 in the revised written statement, dated 12th April, 1967 of the management?

(2) Whether the Engineering Mazdoor Union is not competent to file the statement of claim in this case for the reasons mentioned in preliminary objection No. 2 of the revised written statement, dated 12th April, 1967 of the management?

(3) Whether the claimant Shri Tilak Raj has been validly retrenched by the management?

(4) Whether the claimant was employed by the management for a period of five years from 24th April, 1964 to 23rd April, 1969 and if so what is its affect on the present case?

(5) Whether the claimant has been victimised by the management?

(6) To what relief, if any, is the claimant entitled?

Issue No. 1.

The present reference is said to be invalid, illegal and *ultra vires* of the powers of the State Government simply because the workmen did not challenge the validity of his retrenchment on the ground that it was not in accordance with the provisions of the Industrial Disputes Act, 1947. In the demand notice he had simply alleged that the retrenchment was not legal because he had been appointed for a period of 5 years. In my opinion the management is not competent to challenge the validity of the reference in this Court on this ground. The workman never admitted that the management did not need his services and that he could not be retrenched simply because he had been employed for a period of 5 years. In the demand notice the workman only advanced one reason as to why his services could not be terminated. It does not mean that the workman conceded that the retrenchment was otherwise valid. The reference has been validly made because whenever any employer discharges, dismisses, retrenches or otherwise terminates the services of a workman, and the workman concerned is aggrieved by reason of the termination of his services then under Section 2-A of the Industrial Disputes Act, 1947 he can raise an industrial dispute and the State Government is competent to refer such a dispute to a Labour Court for adjudication and this is exactly what the State Government has done in this case. The Court has been called upon to adjudicate upon the validity of the action of the management in terminating the services of the claimant. Since the management alleges that the services of the claimant have been retrenched on the ground that he had become surplus due to lessening of work this Court in order to adjudicate upon the validity of the retrenchment, is bound to see whether the provisions of Section 25 F of the Industrial Disputes Act, 1947 and the rules made thereunder have been complied with or not. In my opinion therefore it cannot be said that the present reference is invalid, illegal or *ultra vires* of the powers of the State Government.

Issue No. 2.

Under the amended Section 2-A of the Industrial Disputes Act, 1947 an individual workman can raise an industrial dispute if he questions the validity of the termination of his services even if no other workman nor any union of workmen espouse his cause. The workman Shri Tilak Raj Anand is personally prosecuting the present reference and has given a letter of authority in favour of Shri C. B. Kaushik, General-Secretary of the Engineering Mazdoor Union of which he is a member. In these circumstances it cannot be said that the Engineering Mazdoor Union was not competent to file a statement of claim simply on the ground that it is not a union of the workmen of the respondent concern. Under the rules of the Engineering Mazdoor Union the workmen employed in any Engineering concerns can become its member and an officer of the union can represent the workman for all purposes. In my opinion, therefore, the Engineering Mazdoor Union was competent to file the statement of claim on behalf of the workman and represent the workman in these proceedings. I find this issue also in favour of the workman.

Issue No. 4.

It would be convenient to discuss this issue before proceeding with the discussion of issue No. 3. Shri Partap Singh the so called employer of the claimant has appeared as a witness and has proved the original certificate which he gave to the claimant appointing him as a painter for a period of 5 years from 24th April, 1964 to 23rd April, 1969. This certificate is dated 24th April, 1964 and is marked Ex. W.W. 4/1. According to the evidence of Shri Partap Singh he was employed as an Engineer by the respondents and he served them from 22nd April, 1964 up to the end of August, 1965. He says that the respondent had given him a letter of appointment but he has not produced that letter of appointment. It is therefore not possible to determine whether he had any authority to engage any worker on behalf of the respondent and fix his pay or period of service. Shri Partap Singh says that the respondent verbally terminated his services and one Shri Radhe Sham Mota was formally designated as a Manager even during the time he was in service but says that Shri Mota never actually did any work as a manager and he (witness) in fact performed the duties of the manager. In my opinion it is clear from the evidence of Shri Partap Singh himself that he did not have any authority to appoint any workman on behalf of the respondents because if the intention of the management had been to delegate to him the authority of appointing the workmen and fix their pay or their period of service they would have formally designated him as a manager but it is clear from the evidence of Shri Partap Singh himself that the respondent formally designated one Shri Radhe Sham Mota as a manager. If the intention of the management had been to appoint the claimant as a painter for a period of 5 years then a letter to this effect would have been issued by Shri Radhe Sham Mota who was formally designated as a manager and not by Shri Partap Singh who appropriated to himself the powers of a manager although he was not appointed as such. It is also not possible to appreciate the reason which is supposed to have promoted Shri Partap Singh to issue a certificate Ex. W.W. 4/1 on 24th April, 1964. According to the evidence of the claimant Shri Tilak Raj Anand he had been appointed on 18th April, 1964. According to the evidence of Shri Partap Singh he was appointed as a Engineer in the respondent concern only on 22nd April, 1964. This means that the claimant was already in the service of the respondents before Shri Partap Singh joined them. In case the intention of the management was to appoint the claimant for a period of 5 years then a letter to this effect would have been given to him on the day of his appointment and it would not have been left to Shri Partap Singh who was still to be appointed to issue a certificate that the appointment of the claimant would be for a period of 5 years. The claimant does not say that he refused to continue in service unless a guarantee of 5 years service was given to him. In his evidence the workman simply says that he was previously working with Shri Partap Singh and when he joined the respondent concern the certificate Ex. W.W. 4/1 was given to him because he asked Shri Partap Singh that he was already employed with him and he would suffer if no guarantee of appointment was given to him. This reason is on the face of it absurd. Obviously the claimant could not continue in the service of Shri Partap Singh when the latter had himself joined the respondent concern and the claimant could not with any justification ask for a 5 years guarantee of service because his previous employer was himself not in a position to retain him. In my opinion therefore it is not satisfactorily proved that the claimant was employed for a period of 5 years or that Shri Partap Singh had any authority to fiive him a guarantee of 5 years service. I, therefore, find this issue in favour of the management.

Issue No. 3.

This is the main issue in this case and though the learned representative of the management addressed lengthy arguments he hardly did justice to the important question relating to the validity of the retrenchment of the claimant. It is true that the claimant has not been able to establish that he was appointed for a period of 5 years but still it was incumbent on the management to prove that the claimant has been validly retrenched. On this point we have simply the evidence of Shri B. L. Sharma Manager of the respondent concern to the effect that the claimant Shri Tilak Raj was appointed as a painter in the concrete mixture department at Rs. 150 P.M. and his services were retrenched because there was no work for him. He had stated that the concretre mixture department was closed in October, 1966 and its working has not been resumed so far. According to Shri Sharma the concrete mixture department was closed because stock worth Rs. 1½ lacs had accummulated and the sales had gone down. In the claim statement the workman had taken a specific plea that the allegations that there was no work for him was baseless. In the notice copy Ex. R/5 which the management sent to the Wage Inspector on 2nd November, 1966, it is stated that the management had decided to close the work (Excepting rivets Section) with immediate effect. Admittedly the claimant Shri Tilak Raj Anand was working in the concrete mixture department. There must have been a number of other workmen working in this Department. The management has not even given a list of the workmen retrenched as a result of the closure of the concrete mixture department and the date from which they were retrenched. No documentory evidence has been led to prove that the concrete mixture department has in fact been closed. The management has simply produced a statement of the record of sales of Rivers and concrete

mixture during the years 1965-66 and 1966-67. A copy of this record is marked Ex. R/1. It may be that the sales of the concrete mixtures had gone down as stated by Shri Sharda but it was essential for the respondent to prove that the concrete mixture department was actually closed and no new machines were made and for this reason the machines already manufactured did not require the services of a whole time painter and the claimant had to be retrenched. It should not have been difficult for the respondent to produce documentory evidence to prove all these facts but this has not been done and in my opinion it would not be safe to rely upon the oral testimony of the manager in proof of the fact that the claimant had become surplus because documentory evidence to prove these facts was available and has not been produced.

Secondly Section 25F of the Industrial Disputes Act, 1947 lays down in very explicate terms, the conditions precedent to a valid retrenchment of workmen. Admittedly the claimant Shri Tilak Raj Anand had put in more than only year's continuous service in the respondent concern. It is laid down in 25F that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer untill,—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in course of six months; and

(c) notice in the prescribed manner is served on the appropriate Government.

Thus we see that in order to constitute a valid retrenchment it was incumbent on the management to pay to the claimant at the time of his retrenchment, compensation equivalent to 15 days' average pay for every completed year of continuous service or any party thereof in excess of 6 months. There is no evidence that the amount due to the claimant on this account was calculated and tendered to him at the time of retrenchment and he refused to accept the same. In the retrenchment notice the claimant has been simply called upon to collect the full amount after the expiry of the period of notice. A mere service of such a notice is certainly not enough. The provision of Section 25F contemplates the actual tender of the amount due to the workman before he is retrenched. As already pointed out there no evidence that any amount was actually tendered and the claimant refused to accept the same. It can not therefore, be said that the provisions of clause (b) of Section 25F of the Industrial Disputes Act, 1947, have been complied with in this case.

There is also no evidence that the provisions of clause (c) of Section 25 F or Rule 75 of the Industrial Disputes (Punjab) Rules, 1968, have been complied with. Rule 75 requires that a notice of retrenchment should be given in form 'P' to the State Government. Shri Sharda has simply stated in his evidence that intimation regarding the retrenchment of the claimant was given by registered post to the Conciliation Officer as also to the Secretary to the State Government, Labour Department and Ex. R/2 and Ex. R/3 are the acknowledgement receipts. Shri Sharda does not say in what form this notice was given to the State Government. Copies of the notices served on the Conciliation Officer and Secretary to the State Government have not been filed. It cannot, therefore, be said that a notice in proper form was actually given to the State Government as required by clause (c) of Section 25F and Rule 75 of the Industrial Disputes (Punjab) Rules, 1958. In view of all these facts it cannot be said that the claimant was validly retrenched and the termination of his service, cannot be said to be justified and in order.

Issue No. 5—

The claimant has stated that he joined the union and was elected its Secretary. He further says that Sarvshri B. L. Sharma and Surjit Singh told him that he should give up the membership of the Union and tempted him by saying that they would give him an increment and bonus etc., but he refused to give up the membership; and thereafter he received the notice of retrenchment and was suspended from service. The claimant, however, does not say that as a member of the Union he indulged in any activities which were not to the liking of the management and for this reason he was victimised. A bogey of victimisation cannot be raised by a workman who happens to be an office bearer of a union and some action rightly or wrongly is taken against him. The question as to whether the action taken against such a workman is right or wrong has to be decided without any prejudice in favour or of against the workman and the fact that he happens to be an Office bearer of an union has no relevancy unless there is positive evidence that the action against the workman was simply taken because as an office bearer of the union he took part in activities which were unpalatable to the management. As already observed there is no evidence in this case that the claimant took part in any activities which may not to the linking of the management and for this reason alone he was victimised. I am, therefore, of the opinion that issue No. 5 is not proved.

Issue No. 6—

In view of my finding on issue No. 3 that the claimant has not been validly retrenched I am of the opinion that he is entitled to be reinstated with full back wages and continuity of service. No order as to costs.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Rohtak.

Dated 30th December; 1967.

No. 48, dated the, Rohtak, 8th January, 1968.

This award is submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act. 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Rohtak.

R. I. N. AHOOJA, Secy.